

Appeal from a decision by the Colorado State Office, Bureau of Land Management, providing notice of termination of oil and gas lease C-42342 for failure to pay rental in a timely manner.

Affirmed.

1. Oil and Gas Leases: Rentals--Oil and Gas Leases: Termination

It is the lessee's responsibility to see that any payment tendered for annual rental on an oil and gas lease is so identified that the appropriate State Office can credit that payment to the proper lease account. When both the official assignment creating a new lease and the notice informing the assignee that the assignment has been approved contain the correct serial number, the new lease terminates by operation of law for failure to pay rental on or before the anniversary date of the lease when the assignor, in tendering annual rental, provides the base lease serial number but fails to identify the new lease by its serial number. BLM properly deems the amount in excess of the payment due on the base lease to be an overpayment on the base lease to be returned to the assignor.

APPEARANCES: James A. Lynch, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

James A. Lynch, Jr., has appealed from the notice dated August 7, 1986, issued by the Colorado State Office, Bureau of Land Management (BLM), informing him that oil and gas lease C-42342 had terminated on July 1, 1986, "for failure to pay rental in a timely manner." The notice further explained to Lynch his right to petition for reinstatement of the lease pursuant to the provisions of 30 U.S.C. | 188(c) (1982) (class I reinstatement) or 30 U.S.C. | 188(d) (class II reinstatement).

Effective July 1, 1983, BLM issued noncompetitive oil and gas lease C-36575 to Charles Edward Strange, Jr., for 1,480 acres of land situated in Rio Blanco County, Colorado, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. | 226 (1982). Effective April 1, 1985, BLM approved an assignment of 100-percent record title interest in the 1,480 acres of land in lease C-36575 from Strange to Mountain Empire Energy Group, Inc. Subsequently, on May 1, 1985, BLM approved a further assignment of 100 percent of record title of all of C-36575 from Mountain Empire to Petroleum Research Corporation (Petroleum).

By notice dated October 25, 1985, BLM formally approved a partial assignment of 40 acres from Petroleum to Lynch, effective November 1, 1985. In this notice, BLM explained:

[T]his assignment, as approved, has the effect of segregating the assigned lands into a new lease with the serial number indicated above after Partial Assignment. All future contact with this office concerning the lands in the partial assignment should refer to this new serial number as the lands will be so identified on our records. [Emphasis added.]

Importantly, BLM informed Lynch that the serial number for the new lease was C-42342.

The anniversary date of both the base lease and Lynch's new lease was July 1, 1986, and the annual rental on both leases was due on or before that date. On June 30, 1986, the Minerals Management Service (MMS) received a check for \$120 from Petroleum bearing the notation "C-36575 White River." This check was accompanied by a letter which stated:

Enclosed please find rental payments for the above referenced Base Lease Serial numbers, [including C-36575].

Please be advised there have been several partial assignments, both approved, and still pending from these Base Leases. Consequently, you will most certainly receive additional (i.e. duplicate) rental payments. In the interest of keeping said Base Leases secured for our clients, we have chosen to pay the rentals on all partials our records indicate are not yet approved. We request all duplicate monies you receive be refunded to us.

Petroleum failed to identify the approved partial assignments by their new serial numbers, so BLM applied the full \$120 payment to the base lease, with the overpayment to be refunded to Petroleum. Lynch failed to pay the annual rental due on C-42342 by the anniversary date, in apparent reliance upon Petroleum's assurance that it would pay such rental. On August 7, 1986, BLM issued its decision terminating Lynch's lease (C-42342) for failure to pay rental in a timely manner.

In his statement of reasons (SOR) for appeal, Lynch asserts that BLM should have segregated \$40 from Petroleum's overpayment on the base lease to cover the annual rental due on C-42342. Lynch explains as follows:

First, I was informed by Petroleum Research Corporation, the company from which I purchased this lease, that they would be paying my rental since their records did not have a copy of an approved assignment from the Colorado BLM. They explained to me that they file four (4) copies of assignments with the BLM, the fourth being a courtesy copy. These four (4) copies bear a cover letter requesting the courtesy copy be returned to them so they may copy it for their files and forward it on to the clients with rental instructions. The enclosed letter and check copy will verify that Petroleum Research Corporation did pay the rental using the Base Lease number. Second, a connection between myself and Petroleum Research Corporation is clearly established in your own records which indicate that my assigned lease (Partial assignment) #C-42342 was assigned out of the Base Lease #C-36575 from Petroleum Research Corporation to myself. Third, Paula Newman, the Administrator for Petroleum Research Corporation has told me she was informed by a representative of Minerals Management that they show the Petroleum Corporation payment as an overpayment on the Base Lease. In essence, this money is merely there, serving no purpose. Fourth, I am apparently being penalized because Petroleum Research Corporation used the Base Lease number and not my partial number. Since Petroleum Research Corporation did not receive approvals as requested from the BLM, they did not have the partial number. They had hoped and assumed that, because they paid the Rental on my behalf, it would have been carried forward from the Base Lease number to my new lease number.

[1] In Pyro Energy Corp., 69 IBLA 327 (1982), BLM approved, effective July 1, 1976, the assignment of 80 acres out of base lease NM 20394 to Pyro, indicating on the approved assignment form that the new serial number for the assigned lease was NM 20394-A. The annual rental for the base lease and the new lease was due on April 1, the anniversary date of the leases. Pyro identified its lease as "NM 20394" on the rental payment for 1976, which was prior to approval of the lease assignment. In 1977, after formal approval of the lease assignment, Pyro submitted a check for annual rental which bore the incorrect identification number "NM 20394," but because Pyro returned the courtesy notice of payment due along with the check, proper credit was given to the account for lease NM 20394-A. In 1978, Pyro did not send in the courtesy notice, but BLM was nevertheless able to credit the account for NM 20394-A because the assignor's rental payment for NM 20394 arrived on the same date as Pyro's rental payment for 20394-A. However, in 1979, Pyro did not return the courtesy notice, so that its payment was credited to the account of lease NM 20394 since the payment check bore this number. Upon receiving payment for NM 20394 from the assignor, BLM returned it. Upon learning that BLM considered lease NM 20394-A terminated by operation of law April 1, 1979, Pyro protested, and when BLM denied its protest, Pyro appealed to the Board.

The Board's reasons for affirming BLM's decision in Pyro Energy Corp. are dispositive of the instant case. The Board observed:

It is the lessee's responsibility to see that any payment tendered for annual rental for an oil and gas lease is so identified that BLM can credit the payment to the proper lease account. Howard Arndt, A-27895 (Apr. 20, 1985); cf. Pacific Transmission Supply Co., 35 IBLA 297, 299 (1978) (holding that lessee met this responsibility by timely filing a letter specifying the lease account to which payment should be applied, thus overcoming its failure to include an identification number on the payment check). Where the payment is not so identified, and, as a result, the payment is not properly credited on or before the anniversary date of the lease, it terminates by operation of law for failure to pay the rental. Howard Arndt, supra.

69 IBLA at 330.

Petroleum's rental payment failed to identify Lynch's approved assigned lease by its new serial number. As the Board stated in Pyro Energy Corp., "[i]n view of the large volume of accounting material which [BLM] must handle each day, it is not unreasonable to require a lessee to bear the responsibility for an error resulting in miscrediting of its annual rental payment." 69 IBLA at 331. The lessee must likewise bear this burden when the assignor tenders annual rental on his behalf. BLM correctly determined that C-42342 terminated by operation of law on July 1, 1986.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

I concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member